

# BOARD OF PESTICIDES CONTROL

**November 21, 2003**

Board Rooms, Senator Inn & Spa  
284 Western Avenue, Augusta

## AGENDA/MINUTES

**9:30 A.M.**

The regular monthly meeting was called to order at 9:35 A.M. by Chair Michael Dann. Other members in attendance included Berry, Bradstreet, Eckert, Humphreys, Jemison and Walton.

1. Introductions of Board and Staff

- ☒ The members and staff introduced themselves, and Dann welcomed Seth Bradstreet as a new member.

2. Public Hearing on Requested Repeal or Proposed Amendment to Section 4 of Chapter 41 Dealing with Aquatic Herbicides

The Board has received a citizen's petition requesting a repeal of Section 4 of Chapter 41 that became effective May 12, 2003 and regulates the sale and use of aquatic herbicides. The Board recognizes that there are problems with the current list of aquatic herbicides and will also consider an alternate amendment to only list products that are registered in Maine and have aquatic uses on the container's label. Further details of the proposed rule were described in the public hearing notice published in major newspapers and mailed to interested parties on October 29, 2003. Copies of the proposed rule are available upon request or may be viewed on the Board's web site at [www.thinkfirstspraylast.org](http://www.thinkfirstspraylast.org).

- ☒ A court reporter recorded the public hearing and will be producing a transcript for Board review at the next meeting.

3. Minutes of the October 15, 2003 Board Meeting

Action Needed: Amend and/or Approve.

- ☒ Berry/Walton: Motion made and seconded to approve the minutes as distributed.

In Favor: Berry, Dann, Eckert, Humphreys, Jemison and Walton  
Abstain: Bradstreet

4. Selection of Persons to Serve on Consensus-Based Rule Development Committee for Critical Pesticide Control Area Request in Gorham

At its June 13, 2003 meeting, the Board voted to address a petition from Mary Ellen Valentine of 19 Morrill Avenue in Gorham for a critical pesticide control area through initiation of a Consensus-Based Rule Development Process. The Board sent letters and

an application to participate to the 34 property owners who would be affected by any rule as well as many other interested parties. In addition, the Board held an informational meeting in Gorham on the evening of October 15<sup>th</sup> and encouraged citizens to complete an application to participate. Eighteen people have responded that they are willing to serve and the staff has listed them by their affiliation. The staff is recommending that the committee be limited to 10 to 12 individuals.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Discussion and selection of appropriate persons to serve on the Consensus-Based Rule Development Committee.

- ☒ Batteese reported that the staff did not receive the map from the Town of Gorham showing which lots would be covered by the 500-foot ban until after the mailing of the packets to the members. He then called their attention to a new memo in their folders offering staff recommendations for 12 people to serve on the committee. Humphreys agreed with the staff selections but stated she would like to add two more neighbors to the committee bringing the total to 14 members.

Humphreys/Jemison: Motion made and seconded to include the names recommended in the staff memo of November 17 (copy attached) plus additional neighbors Burt Kenty and either Ronald or Deborah Strout.

In Favor: Unanimous

Batteese asked if any Board member wished to serve on the committee and did not get any volunteers. There was consensus that Fish should serve as facilitator and Bourdeau as scribe.

5. Adoption of a Policy to Define the Term Non-Volatile Product as Used in Chapter 27

Several pest management companies and school officials have questioned which products are considered non-volatile and therefore exempt from the five day notification requirements in Chapter 27. The staff found two reasonable definitions of "volatile" but only one of "non-volatile" and it would exclude everything but silica. The staff is therefore recommending the Board adopt a policy that non-volatile products are those with vapor pressures less than the level defined as volatile, i.e. 10 to 267 Pascals or 0.75 to 2 millimeters of mercury. This would mean most commonly used active ingredients in bait, gel or granular formulations would be exempt while their presence in liquid formulations containing solvents or propellants would not be exempt from the notification procedures.

Presentation By: Gary D. Fish and Lebelle R. Hicks  
Cert. & Lic. Specialist Pesticides Toxicologist

Action Needed: Discussion and determination if the Board wishes to adopt a policy defining non-volatile pesticides until the Board conducts a housekeeping amendment to add the definition to the Board's

regulations.

- ☑ Fish referred to the staff memo of November 12<sup>th</sup> and observed that the exemption from notification provided in Chapter 27 would be useless if only silica products were considered non-volatile. He recommended adoption of the policy that was in their folders and reiterated that most pesticides in bait, gels and granulars would be exempt but that liquid formulations bearing a solvent or propellant would not be exempt.

Jemison/Walton: Motion made and seconded to adopt the policy recommended by staff until the Board considers a housekeeping amendment to add the definition to the Board's regulations.

In Favor: Unanimous

6. Review of Staff's Draft Report on a Pilot Study to Develop Methods and Gather Data to Help Determine the Potential of Railroad Right of Way Herbicides to Contaminate Maine's Surface or Ground Water

Since July 2002, the Board has been concerned that the currently accepted 10-foot buffer might not be sufficient to protect surface water from either drift or leaching of herbicides applied to railroad rights of way. In response, the Maine Department of Transportation organized a stakeholders group to collect information and that group reported back to the Board at last month's meeting. In addition, the Board's staff began a small-scale water quality monitoring study this past summer and distributed a draft report at last month's meeting. Since there was not time to thoroughly review the report at that meeting, the staff has made a few minor revisions and seeks additional Board input before finalizing the report.

Presentation By: Heather P. Jackson  
Water Quality Specialist

Action Needed: Discussion and determination if the members suggest further revisions or have recommendations for monitoring in 2004.

- ☑ Jackson announced a few revisions to the draft the members had seen at the previous meeting. She noted it was a report of what she had been able to do the past season and asked for recommendations from the Board before attending a meeting of the Railroad Right of Way Stakeholders on December 11<sup>th</sup>. Jennings suggested the Board should condition of any future variances with a requirement that the spray contractor provide the staff with accurate scheduling so sampling could be conducted when the applications are made. Berry asked if the staff would be lenient with applicators who observed the current buffer and still had residues being detected in the water body. Jennings agreed to discuss this matter with Assistant Attorney General Mark Randlett.

7. Continued Review of Chapter 24 Requirements for Signs in Self-Service Sales Areas

The Board's field staff has raised questions about the purpose and effectiveness of the 8.5 by 11 inch signs that the Board's Chapter 24 regulation requires be posted in self-service display areas of general use pesticide dealers. An internal discussion led to a consensus

that although the sign serves to inform the public about where more information on pest control may be obtained, there is a definite need for redesigning the format and language. The staff shared some initial drafts at the last meeting and has revised copies for additional review at this meeting.

Presentation By: Kelly Bourdeau  
Public Information Officer

Action Needed: Discussion and determination if the Board wishes to recommend other changes or is ready to initiate rulemaking to allow a new format for the signs.

- ☑ Bourdeau reported the two new versions of the sign resulted from input from the Board, staff and Cooperative Extension Personnel in Orono. Humphreys indicated she liked the content of the format with the tabs but questioned the use of tabs. She also recommended increasing the font size on the words "Read the Label". Eckert suggested using self-sticking sheets rather than the tabs and also expressed concern that the language about being in a pesticide storage area was missing. Randlett observed the policy included in the folders would be so different from the rule that it would not be possible to find a violation until the rule was amended. Bradstreet indicated some people may not realize they are in a pesticide storage area and recommended requiring the original sign as well as the new sign. Bourdeau concluded the discussion by recommending that the words "pesticides sales area" be placed around the perimeter of the sign and deleting any picture of Cooperative Extension Personnel.

Bradstreet/Eckert: Motion made and seconded to approve a policy that an amended Section 7.A. should read as follows: All pesticides, unless they are exempted products under 22 M.R.S.A. §1471-W(5), shall be displayed in a separate area that is identified by a Board approved sign designating the sales area and informing the public where to obtain additional information.

In Favor: Unanimous

8. Consideration of Staff Negotiated Consent Agreement with Mainescapes, Inc. of Blue Hill

On June 3, 1998, The Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts of law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involves the distribution of general use pesticides at a retail store over a four-year period when they were not licensed and the last two years when they only renewed their general use pesticide dealer license after an inspector's visit. These actions constitute a violation of the Board's statute requiring any person distributing general use pesticides to be licensed as a general use pesticide dealer.

Presentation By: Henry S. Jennings  
Chief of Compliance

Action Needed: Approve/Disapprove the consent agreement negotiated by staff.

☒ Jennings explained that this company is only open for a short period each year and only maintains a limited stock of pesticides. He also noted that the monetary fine is set according to levels established for similar circumstances and is also intended to remove any economic incentive to not be licensed.

Eckert/Bradstreet: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Berry, Bradstreet, Eckert, Humphreys, Jemison and Walton  
Absent (for television news interview): Dann

9. Consideration of Staff Negotiated Consent Agreement with Cape Arundel Golf Course of Kennebunkport

This case is similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. This case involves the application of pesticides to the turf at the Cape Arundel Golf Course that is considered a place open to use by the public. At the time of the application, no company employees were licensed as a commercial applicator. This action constitutes a violation of the Board's statutes that require a licensed applicator be present whenever custom applications are conducted.

Presentation By: Henry S. Jennings  
Chief of Compliance

Action Needed: Approve/Disapprove the consent agreement negotiated by staff.

☒ Jennings explained this case involved a new superintendent who waited a year before becoming licensed.

Jemison.Berry: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Berry, Bradstreet, Eckert, Humphreys, Jemison and Walton  
Abstain(absent during explanation): Dann

10. Consideration of Staff Negotiated Consent Agreement with Foggy Bottom Co-op of Machias

This case is also similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. This case involves the distribution of hexazinone that may only be distributed by a licensed restricted use dealer and only to licensed private or commercial applicators. At the time of the distribution, none of the employees of the Foggy Bottom Co-op were licensed as a restricted use pesticide dealer and some of the sales were to unlicensed applicators. These actions constitute violations of the Board's regulations placing special restrictions on the sale and use of hexazinone.

Presentation By: Henry S. Jennings  
Chief of Compliance

Action Needed: Approve/Disapprove the consent agreement negotiated by staff.

- ☒ Jennings reminded the members that this case and the next one resulted from prior Board member Alan Lewis raising questions about hexazinone being detected in the Machias drinking water supply. When an inspector checked with growers who owned land around the well head, he discovered that one of the growers no longer had a valid license and neither did the co-op that sold him hexazinone products. He noted both entities had been very cooperative and had quickly obtained proper licensing.

Eckert/Berry: Motion made and seconded to approve the consent agreements negotiated by staff for both Foggy Bottom Co-op and Lincoln Sennett in Agenda Item # 11.

In Favor: Unanimous

11. Consideration of Staff Negotiated Consent Agreement with Lincoln Sennett of Albion

This case is also similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. This case involves an unlicensed grower who purchased and applied hexazinone to his blueberry land. These actions constitute a violation of the Board's regulations placing restrictions on the sale and use of hexazinone.

Presentation By: Henry S. Jennings  
Chief of Compliance

Action Needed: Approve/Disapprove the consent agreement negotiated by staff.

- ☒ See motion to approve the consent agreement in Agenda Item #10 above.

12. Election of Officers

The Board's statute requires an annual election of officers. The members will choose a chair and vice-chair to serve for the coming year.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Nominations and election of officers.

- ☒ Berry/Humphreys: Motion made and seconded to elect Eckert to serve as Chair for the coming year.

In Favor: Berry, Bradstreet, Dann, Humphreys, Jemison and Walton  
Abstain: Eckert

Walton/Eckert: Motion made and seconded to elect Berry to serve as Vice-Chair for the coming year.

In Favor: Bradstreet, Dann, Eckert, Humphreys, Jemison and Walton

Abstain: Berry

13. Other Old or New Business

a. West Nile Virus Update - L. Hicks

☒ Hicks reported a year end tally revealed 98 dead birds had tested positive for WNV and had been collected from 12 of the 16 counties. She noted that there had not been any positive tests from humans or horses. In addition, she announced that the WNV Task Force had scheduled an educational meeting for municipal officials at the Augusta Civic Center on January 15<sup>th</sup>.

b. 2003 Pesticide Product Registration Summary - W. Smith

☒ Smith explained he closes the books at the end of October and that the total number of products had declined slightly by 0.50% from 2002. He observed that part of the decrease could be due to the loss of many chlorpyrifos and diazinon products for homeowner use. In addition, he reminded the members that the fee per product would be increasing another \$10.00 bringing the annual registration fee to \$125.00 per product.

c. Obsolete Pesticide Collection Update - R. Batteese

☒ Batteese reported that the annual collection conducted the week of October 20<sup>th</sup> served 55 people and resulted in 6,688 pounds of products for disposal at out of state licensed facilities.

d. Pesticide Container Recycling Update - R. Batteese

☒ Batteese reported this program had experienced several problems with scheduling and also noted ACRC's contractor would prefer to see the containers bailed and shipped to an out of state shredder. He indicated he would be trying to meet with a group of dealers in Aroostook County early in December. He also stated he would also like to interest Bradstreet in playing a role in the future of this program.

e. Other ???

☒ Batteese reminded the members Travis Drake of Wymans would still like to have a delegation visit the site of the Deblois Critical Area. Drake followed up by pointing out many changes had occurred since the incident in 1972 including the facts the hatchery is no longer in use and that large tree buffers now exist to protect much of the 72 acres affected by the restrictions on pesticide use. Berry, Bradstreet and Dann volunteered to meet with Drake and view the site in the near future.

14. Schedule and Location of Future Meetings

- ☒ The Board scheduled the next meeting for Friday, December 19<sup>th</sup> in Augusta. The tentative date for the following meeting was set for Friday, January 23<sup>rd</sup> with a snow date of January 30<sup>th</sup>.

15. Adjourn

- ☒ A motion to adjourn was accepted at 12:32 P.M.

Robert I. Batteese, Jr.  
Director